Supreme Court, U.S.
FILED

No. 05- 05-225 AUG 12 2005

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IN THE

Supreme Court of the United States

GENERAL DATACOMM INDUSTRIES, INC.,

Petitioner,

v.

JAMES R. ARCARA, FREDERICK R. CRONIN, ROBERT S. SMITH, and THOMAS L. THOMPSON,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JOHN B. SHERMAN
WEISMAN CELLER SPETT & MODLIN, P.C.
445 Park Avenue
New York, New York 10022
(212) 371-5400

Counsel for Petitioner

195936

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Should this Court grant certiorari in a case involving the judicial amendment of 11 U.S.C. § 1114 (hereinafter "Section 1114") (70a-76a)*, a statute which is applicable to all Chapter 11 reorganization bankruptcy cases where the debtor provides health care benefits to retired employees?

2. Where Section 1114, by its express terms as enacted by Congress, applies only to "retired employees", was it error for the Court of Appeals to hold that the statute applies to non-retired employees?

3. Where Section 1114 is clear and unambiguous in that it applies only to "retired employees", was it error for the Court of Appeals to deliberately render the statute ambiguous and its applicability uncertain, and to expressly invite further litigation to resolve the ambiguity and uncertainty, by holding that the type of non-retired employees to whom the statute applies must be determined on a case-by-case basis?

4. Was it error for the Court of Appeals to amend Section 1114, and to thereby render the statute ambiguous and its applicability uncertain, because the Court concluded that the application of Section 1114 which as enacted by Congress applies only to "retired employees", would be unfair in the present case?

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* References to "(__a)" are to the pages of the Appendix to this Petition.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

1. General DataComm Industries, Inc. ("GDC" or "Petitioner").

2. James R. Arcara

3. Frederick R. Cronin

4. Robert S. Smith

5. Thomas L. Thompson

GDC is a publicly held corporation. GDC has no publicly held subsidiaries or affiliates.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit at issue is reported in *General DataComm Indus., Inc. v. Arcara (In re General DataComm Industries, Inc.)*, 407 F.3d 616 (3d Cir. 2005). The Third Circuit's opinion is reproduced in the Appendix at pp. 2a-34a. The final judgment and memorandum opinion of the United States District Court for the District of Delaware in *General DataComm Indus., Inc. v. Arcara (In re General DataComm Industries, Inc.)*, 309 B.R. 848 (D. Del. 2003) is reproduced in the Appendix at pp. 35a-48a.

BASIS FOR JURISDICTION

This Court has jurisdiction by writ of certiorari pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED IN THIS CASE

1. 11 U.S.C. § 365(a)

11 U.S.C.S. § 365 (2005)

§ 365. Executory contracts and unexpired leases.

(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

2. 11 U.S.C. § 1114

See Appendix E

STATEMENT OF THE CASE

This petition involves the interpretation of Section 1114, a statute which is applicable in every Chapter 11 bankruptcy case where the debtor has provided health care benefits to retirees. As demonstrated below, the Court of Appeals judicially amended the statute and, in so doing, rendered it ambiguous and its applicability uncertain and subject to future piecemeal litigation.

This case concerns certain Benefit Agreements for Long Term Senior Executive Officers and other Senior Level Employees of General DataComm Industries, Inc., ("GDC" or "Petitioner") dated September 4, 1997 (the "Agreements"). In the proceedings below, the Bankruptcy Court declared, by final order dated July 9, 2002, (49a-50a) that the Petitioner could not reject Agreements pursuant to Section 365 of the Bankruptcy Code or otherwise modify any of the benefits of James R. Arcara, Frederick R. Cronin, Robert S. Smith and Thomas L. Thompson or other similarly situated individual(s) (collectively, the "Respondents") provided for in the Agreements, without first complying with the mandates and procedural requirements of Section 1114 of the Bankruptcy Code, a statute which, by its express terms, protects only "retired employees". (70a). The District Court affirmed the Bankruptcy Court's Order, (35a-48a) and by Opinion and Judgment dated May 16, 2005 the United States Court of Appeals for the Third Circuit affirmed the District Court's Judgment. (2a-34a).

STATEMENT OF THE FACTS

A. *GDC's Businesses*

GDC is a worldwide provider of wide area networking and telecommunications products and services. The Petitioner designs, assembles, and markets products and services for the telecommunications markets.

B. *GDC's Chapter 11 Cases*

On November 2, 2001 (the "Petition Date"), GDC and its subsidiaries and affiliates filed their respective voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*). Throughout their bankruptcy cases GDC continued in possession of its properties and managed its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

C. *The Agreements*

The Agreements were specifically entered into by and between GDC and Charles P. Johnson (deceased), Sol Wolfe, and Respondents Arcara, Cronin and Smith. GDC granted Respondent Thomas Thompson the same benefits granted in the Agreements through a subsequent agreement.

At issue on this appeal are Sections 3 and 4 of the Agreements which provide for certain health care benefits. Section 3 requires GDC to provide Long Term Care Insurance to the Respondents and their spouses during their lifetimes. Section 4 of the Agreements requires GDC to continue the health insurance which they were furnishing to the Appellees after the Respondents' retirement. (3a-5a).

On November 19, 2001, i.e. 2½ weeks after the Petition Date, GDC "advised the Respondents that they would be terminated on November 30, 2001, and that the [Agreements] would be terminated on that same date". (7a). Despite this notice, the Respondents did not retire, but on November 29, 2001, the date of the filing of GDC's motion pursuant to 11 U.S.C. § 365(a) to reject the Agreements, were all still employed by the Petitioner. On November 30, 2001, GDC terminated Respondents Cronin, Smith and Thompson. Respondent Arcara continued to work for GDC through and including January 6, 2002. Each of the individual Respondents were terminated by GDC before retiring.

D. ***The Holdings of the Courts Below***

On November 29, 2001, GDC filed a Motion, whereby it sought to reject the Agreements pursuant to Section 365(a) of the Bankruptcy Code, effective as of the Petition Date (i.e. November 2, 2001). In response thereto, on March 21, 2002, the Respondents filed an Objection. On April 25, 2002, the Bankruptcy Court conducted a hearing on the Motion and entered an Order Denying GDC's Motion to Reject Certain Executory Contracts Pursuant to Section 365 of the Bankruptcy Code with respect to the Agreements, holding that Section 1114 precluded such rejection (49a-69a). On July 17, 2002, GDC filed a Notice of Appeal to the United States District Court for the District of Delaware of the Order.

By Decision and Order dated February 24, 2003, the District Court affirmed the Order of the Bankruptcy Court (35a-48a), and GDC appealed to the U.S. Court of Appeals for the Third Circuit.